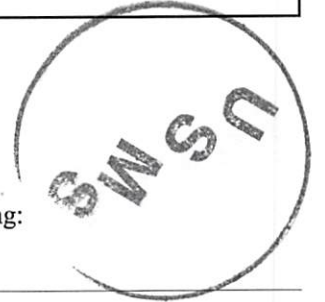


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**KOMITEE, J.**
**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

United States District Court		District: <u>EDNY</u>
Name (under which you were convicted): <u>John Trisvan</u>		Docket or Case No.: <b>CV 22-2600</b>
Place of Confinement:	Prisoner No.: <u>98A0221</u>	
Petitioner (include the name under which you were convicted): <u>JOHN TRISVAN</u>	Respondent (authorized person having custody of petitioner) v. <u>DEPT. of Correctional Services</u>	
The Attorney General of the State of: <u>New York State</u>		

**PETITION**

- (a) Name and location of court that entered the judgment of conviction you are challenging:  
Brooklyn Supreme Court  
360 Adams Street  
Brooklyn, New York 11201

(b) Criminal docket or case number (if you know): 5395/97
- (a) Date of the judgment of conviction (if you know): 11/10/1997

(b) Date of sentencing: 12/11/1997
- Length of sentence: 12 1/2 to 25 yrs.
- In this case, were you convicted on more than one count or of more than one crime? ☐ Yes ☒ No
- Identify all crimes of which you were convicted and sentenced in this case: manslaughter in the 1st degree
- (a) What was your plea? (Check one)

<input checked="" type="checkbox"/> (1)	Not guilty	<input type="checkbox"/> (3)	Nolo contendere (no contest)
<input type="checkbox"/> (2)	Guilty	<input type="checkbox"/> (4)	Insanity plea

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(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(c) If you went to trial, what kind of trial did you have? (Check one)

☒ Jury ☐ Judge only

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

☐ Yes ☒ No

8. Did you appeal from the judgment of conviction?

☒ Yes ☐ No

9. If you did appeal, answer the following:

(a) Name of court:

Appellate Division of Supreme Court 2<sup>nd</sup> Dept

(b) Docket or case number (if you know):

97-11378

(c) Result:

Affirmed

(d) Date of result (if you know):

(e) Citation to the case (if you know):

280 A.D.2d 563

(f) Grounds raised:

1.) The court incorrectly discharged and replaced a juror from panel; People failed to prove beyond a reasonable doubt; Defendant caused the death of the deceased; and that the verdict was against the weight of the evidence.

(g) Did you seek further review by a higher state court?

☒ Yes ☐ No

If yes, answer the following:

(1) Name of court:

New York State Court of Appeals

(2) Docket or case number (if you know):

(3) Result:

wt of certiorari denied

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(4) Date of result (if you know):

6/29/2004

(5) Citation to the case (if you know):

98 NY.2d 889

(6) Grounds raised:

(h) Did you file a petition for certiorari in the United States Supreme Court?

☐ Yes☒ No

If yes, answer the following:

(1) Docket or case number (if you know):

(2) Result:

(3) Date of result (if you know):

(4) Citation to the case (if you know):

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court? ☒ Yes ☐ No

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court:

Saint Lawrence County Court

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

9/16/2004

(4) Nature of the proceeding:

writ of habeas corpus

(5) Grounds raised:

1.) Cruel and unusual punishment by prison officials violating constitutional rights; 2.) Incriminating statements obtained in violation of 14th Amendment; 3.) Defective grand jury proceedings; 4.) Identification process impermissibly suggestive in violation of due process rights under the 14th Amendment; 5.) prosecution withheld material evidence favorable to the defense, ineffective assistance of trial counsel; and 6.) ineffective assistance of appellate counsel on appeal.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes☒ No

(7) Result:

Petition dismissed without evidentiary hearing



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(8) Date of result (if you know):

10/18/2004

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court:

Washington County Supreme Court

(2) Docket or case number (if you know):

(3) Date of filing (if you know):

1/26/2005

(4) Nature of the proceeding:

Writ of State habeas corpus

(5) Grounds raised:

1) Defective grand jury proceedings; 2) incriminating statements obtained in violation of the 14th Amendment; 3) Identification process was impermissibly suggestive; 4) Prosecution withheld material evidence involving cooperation agreement with testifying witnesses; and 5) Crime Scene Unit fingerprint report favorable to defense; 6) ineffective assistance of trial counsel; and 7) ineffective assistance of appellate attorney on appeal.

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes☒ No

(7) Result:

petition denied and dismissed without hearing

(8) Date of result (if you know):

6/23/2005

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court:

Cayuga County Supreme Court

(2) Docket or case number (if you know):

2007-8448

(3) Date of filing (if you know):

4/9/2007

(4) Nature of the proceeding:

Writ of habeas corpus

(5) Grounds raised:

indictment defective due to failure to effectively charge petitioner as the Defendant or for the crimes indicted for; 2) Trial court lacked subject matter jurisdiction to try the case at court.

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(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

☐ Yes ☒ No(7) Result: Petition denied and dismissed without hearing(8) Date of result (if you know): 9/11/2007

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: ☐ Yes ☒ No(2) Second petition: ☐ Yes ☒ No(3) Third petition: ☐ Yes ☒ No

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:

Case was never heard by New York State Court of Appeals due to case never being heard by the appellate division in the 3<sup>rd</sup> Dept.

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

**CAUTION:** To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

**GROUND ONE:** State failed to provide Petitioner John Trisvan a fair trial by presenting evidence knowingly improperly obtained in violation of Constitution;

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Louis N. Scarcella, the chief Detective and investigator of the Brooklyn North Homicide Squad, which in 1997 had control over the investigation, in which time, there was question to how the evidence the State presented had been unlawfully obtained by said Detective within the Crime Scene Unit. The State withheld such facts, although it was held years after Petitioner had been convicted, Detective Scarcella had been found guilty of investigative misconduct

(b) If you did not exhaust your state remedies on Ground One, explain why:



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(c) **Direct Appeal of Ground One:**(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☒ No(2) If you did not raise this issue in your direct appeal, explain why: Counsel that was appointed failed to include such claims of improper evidence obtaining(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☒ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Petition for a writ of habeas corpusName and location of the court where the motion or petition was filed: Saint Lawrence County Court  
47 Court Street, Canton, NY 13617-1169

Docket or case number (if you know):

Date of the court's decision: 10/18/2004Result (attach a copy of the court's opinion or order, if available): Petition was denied and dismissed without evidentiary hearing(3) Did you receive a hearing on your motion or petition? ☐ Yes ☒ No(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☒ No(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☒ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: \_\_\_\_\_

**GROUND TWO:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

(b) If you did not exhaust your state remedies on Ground Two, explain why: \_\_\_\_\_

(c) **Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

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Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

☐ Yes

☐ No

(4) Did you appeal from the denial of your motion or petition?

☐ Yes

☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

☐ Yes

☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two : \_\_\_\_\_

**GROUND THREE:** \_\_\_\_\_

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):



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(b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_  
\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_  
\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three:

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**GROUND FOUR:**

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(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

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(b) If you did not exhaust your state remedies on Ground Four, explain why:

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(c) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue? ☐ Yes ☐ No

(2) If you did not raise this issue in your direct appeal, explain why:

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(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

☐ Yes ☐ No

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition:

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Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition? ☐ Yes ☐ No

(4) Did you appeal from the denial of your motion or petition? ☐ Yes ☐ No

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal? ☐ Yes ☐ No

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: \_\_\_\_\_



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13. Please answer these additional questions about the petition you are filing:

- (a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? ☐ Yes ☐ No

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them:

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- (b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

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14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? ☐ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available.

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15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? ☐ Yes ☐ No

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

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16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Frank Pione

16 Court Street, Brooklyn, NY 11201

(b) At arraignment and plea:

"Same as above"

(c) At trial:

"Same as above"

(d) At sentencing:

"Same as above"

(e) On appeal:

~~"Same as above"~~ Susan B. Marbaffer

(f) In any post-conviction proceeding:

~~pro-se~~ pro-se

(g) On appeal from any ruling against you in a post-conviction proceeding:

pro-se

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? ☐ Yes ☒ No

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? ☐ Yes ☒ No

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition.\*

Petitioner comes before this Court presenting newly discovered evidence of which was not previously known during trial and/or at the time of one's conviction was challenged within that one yr. Said case was within the statute of limitations. It was only brought to the attention of petitioner that the Chief Detective

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Louis Scarcella had been found guilty of investigative misconduct, those of which Petitioner had been falsely accused of such crime, and was charged, arrested and wrongfully convicted of.

Once Petitioner had been made aware of this Chief Detective's role and involvement in the make-up and handling of his case, Petitioner sort out to this Court to urge the Court to over-turn his conviction and free him of this wrongfully obtained conviction and sentence.

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\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of -
  - (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.



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- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

Therefore, petitioner asks that the Court grant the following relief:

grant the said writ before  
this court and vacate the judgment of conviction, and  
remove said conviction as in overturning said judgment and  
sentence.

or any other relief to which petitioner may be entitled.

pro-se

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on \_\_\_\_\_ (month, date, year).

Executed (signed) on \_\_\_\_\_ (date).

May 5, 2022

Signature of Petitioner

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition.



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